

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3292-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

SALLY R. DIX,

Petitioner-Respondent,

v.

JOHN PATRICK STYER,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Dunn County:
DONNA J. MUZA, Judge. *Affirmed.*

Before LaRocque, Myse and Mangerson, JJ.

PER CURIAM. John Styer appeals a judgment granting his former wife a domestic abuse injunction.¹ He argues that the evidence is insufficient to support the injunction and that the trial court erroneously limited cross-examination. We affirm the judgment.

¹ This is an expedited appeal under RULE 809.17, STATS.

After an evidentiary hearing, the trial court granted a domestic abuse injunction against Styer for a period of two years. Section 813.12(4), STATS., provides that the court may grant an injunction if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5)(a).
2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing
3. After hearing, the judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

The court shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but "may not base his or her decision solely on the length of time ... since the relationship ended." *Id.* Domestic abuse is defined as the following conduct or threat to engage in the following conduct: intentional infliction of physical pain, physical injury or illness; the intentional impairment of physical condition; or a violation of § 940.225(1), (2) or (3), STATS., (sexual assault). Section 813.12(1)(a), STATS.

Sally Dix filed a petition requesting the injunction and alleging that she feared for her safety based upon Styer's past violence. It stated that he pled guilty to two felonies, false imprisonment and bail jumping, based upon incidents committed against her. Styer was served with the notice of hearing and petition.

At the November 4, 1996, injunction hearing, without objection, the trial court took judicial notice of Styer's two 1993 criminal convictions for false imprisonment and bail jumping, as well as judicial notice of the parties' divorce proceeding. Dix testified that the false imprisonment charges arose out of an incident in which Styer waited in her vehicle until she came out of work. He told her that he had a gun and that she would do what he told her to do. Dix testified that the bail jumping charges were brought when Styer was out on

bail on the false imprisonment charges. He contacted Dix's sister and told her that he had hired somebody to do severe harm to Dix and her family if she did not come back to be his wife.

Dix testified that since the divorce, Styer violated the custody decree by transporting the children himself rather than having another family member do it. Dix also testified that on October 13, 1996, Styer brought the children to her home, came into her home and stayed for forty-five minutes, despite her requests that he leave. Dix further testified that because of a ch. 48, STATS., proceeding involving her children and Styer, she is "concerned that [Styer is] upset about these ... allegations. And I'm concerned that he's going to take it out on me and my children, but more specifically today for me." She also testified that within the last six months, Styer has indicated that several things wrong in his life are her fault. Based upon his history, she perceived this to be a threat.

Styer denied that he blamed Dix for several things wrong in his life. He also testified that he may have spent time at her house when returning the children, but that he did not recall being asked to leave. The trial court found that there were reasonable grounds to believe that Styer has engaged or based on his prior conduct might engage in domestic abuse of Dix. The court granted the injunction. Styer appeals.

We reject Styer's argument that the evidence is insufficient to support a domestic abuse injunction. This issue requires the application of a set of facts to a statutory standard, a question of law we review de novo. See *Kania v. Airborne Freight Corp.*, 99 Wis.2d 746, 758-59, 300 N.W.2d 63, 68 (1981). Although the trial court made no specific factual findings, we may assume that the court's findings would have been consistent with its decision to grant the injunction. See *Sohns v. Jensen*, 11 Wis.2d 449, 453, 105 N.W.2d 818, 820 (1960). The trial court, not the appellate court, assesses the weight and credibility of the testimony. Section 805.17(2), STATS.

Dix's testimony discloses four incidents that support the injunction: (1) the false imprisonment conviction; (2) the bail jumping conviction; (3) Styer's remaining at Dix's home for forty-five minutes despite her requests that he leave; and (4) his recent statements that several things wrong in his life are Dix's fault.

The first two incidents constitute domestic abuse in the form of threats to inflict physical injury. See § 813.12(1)(a)4, STATS. The trial court could reasonably infer that the second two incidents indicate a continuing pattern of manipulation and intimidation, demonstrating potential danger posed to Dix. Cf. *State v. Friday*, 147 Wis.2d 359, 370-71, 434 N.W.2d 85, 89 (1989) ("It is not within the province of ... any appellate court to choose not to accept an inference drawn by a factfinder when the inference drawn is a reasonable one."). Based on Dix's testimony, the trial court was entitled to find "reasonable grounds to believe that [Styer] has engaged in ... domestic abuse" of Dix. Section 813.12(4)3, STATS. This determination supports the injunction.

Next, we reject Styer's claim that the trial court erroneously limited his cross-examination of Dix. Styer complains that the court sustained objection to the following question: "And he's ... not acted violently towards you since then?"

A lack of violent acts is not necessarily a defense under § 813.12, STATS., because a "threat" to inflict physical pain or injury also constitutes domestic abuse. Section 813.12(1)(a)4, STATS. Second, testimony that Styer did not act violently at certain times does not necessarily lead to the inference that he did not act violently at other times.

Third, Dix had previously testified on cross-examination that the "last time that Pat physically acted violently towards me was during the times that he was charged with his felonies ... [a]pproximately two and a half years ago." Therefore, because the information sought by further cross-examination was already before the court, the court's ruling did not prejudice Styer. See § 901.03(1), STATS. (error may not be predicated upon an evidentiary ruling unless a substantial right of the party is affected). The record does not support Styer's claim of reversible error.

By the Court. — Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.